

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

HENRY M. JAGOS,

Plaintiff,

Case No. 12-CV-11955

v.

HON. GEORGE CARAM STEEH

XCELERATED INVESTMENTS, INC.,

Defendant.

ORDER GRANTING PLAINTIFF'S MOTION TO REQUEST EXTENSION OF
SUMMONS (#23) AND DENYING MOTION FOR DEFAULT JUDGMENT (#21)

On May 1, 2012, plaintiff filed this action alleging violations of the Fair Credit Reporting Act. On June 11, 2012, plaintiff filed a certificate of service showing the summons and complaint were sent to defendant at 2940 Hebron Park Drive, Suite 307, Hebron, Kentucky, 41048 by certified mail, return receipt requested. Rebecca Bowman signed the receipt form. Rebecca Bowman is not listed as an officer on the Kentucky Secretary of State's profile for defendant. The Kentucky Secretary of State's profile for defendant shows that defendant has designated Business Filings Incorporated as its registered agent, at 306 West Main Street, Suite 512, Frankfort, Kentucky, 40601.

As noted in this court's orders, Federal Rule of Civil Procedure 4(h) provides the manner for serving a corporation. A corporation may be served by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made" or "by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any

other agent authorized by appointment or by law to receive service of process and – if the agent is one authorized by statute and the statute so requires – by also mailing a copy of each to the defendant.”

Defendant did not answer the complaint and plaintiff filed a motion for default judgment. However, because it did not appear that defendant was properly served, the court denied plaintiff’s motion for default judgment without prejudice and cancelled the hearing. The order instructed that plaintiff could “file a motion for default judgment after demonstrating proper service on defendant.”

On August 23, 2012, plaintiff filed a “response” to that order, asking the court to reconsider its order denying plaintiff’s motion for default judgment. Plaintiff argued defendant was aware of this case as evidenced by some email correspondence discussing settlement negotiations. However, plaintiff failed to demonstrate proper service on defendant as instructed by the order. The court therefore construed plaintiff’s response as a motion for reconsideration and denied the motion for reconsideration.

On October 24, 2012, plaintiff filed a motion for entry of default judgment. Plaintiff claims to have served defendant by certified mail to defendant’s registered agent. Because plaintiff failed to provide any legal authority showing that certified mail is an acceptable method of service of the summons and complaint and because plaintiff failed to provide an explanation as to why he is entitled to judgment on his claim for damages under the Fair Credit Reporting Act, the court ordered plaintiff to file a supplemental brief by November 14, 2012.

Plaintiff did not file a supplemental brief. Instead, plaintiff filed a motion to request an extension of the summons for 60 days to allow plaintiff to properly serve defendant.

Federal Rule of Civil Procedure 4(m) provides that “if the plaintiff shows good cause for the failure” to serve a summons within 120 days after filing the complaint, “the court shall extend the time for service for an appropriate period.” Plaintiff states he now understands his mistake in attempting to serve the summons by mail. Given the circumstances, the court finds good cause exists to extend the period under Rule 4(m) for 60 days from the date of this order.

IT IS HEREBY ORDERED that plaintiff’s motion to extend time to serve summonses is GRANTED.

Dated: March 6, 2013

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served on March 6, 2013, by U.S. mail, upon plaintiff at 6776 N. Burkhart Road, Howell, MI 48855, upon defendant at 2940 Hebron Park Drive, Suite 307, Hebron, Kentucky, 41048, and upon defendant’s registered agent at 306 West Main Street, Suite 512, Frankfort, Kentucky, 40601.

s/Barbara Radke
Deputy Clerk